

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:MSR:HOU:TL-N-TL-N-3895-98
JRBalboni

date: **AUG 16 1999**

to: Chief, Quality Measurement Staff, Houston District

from: District Counsel, Houston District, Houston

subject: **Review of Proposed Notice of Deficiency**

Taxpayer: Enron Corporation and Subsidiaries

EIN: 47-0255140

Years: 1995

We have reviewed the above-stated notice of deficiency and agree to the issuance of the notice with the following changes. We have previously returned to your office the proposed explanation paragraphs with certain changes. The recommended changes need to be made in accordance with the corrections we made on the explanation paragraph pages before the notice is sent to the taxpayer.

We cannot approve the adjustment titled "Sale of Enron Management, Inc. Stock" (adjustment h. under Enron Corporation). That proposed adjustment is a determination that Enron should not be allowed a long term capital loss on the sale of Enron Management, Inc. preferred stock in the amount of \$188,515,109. The primary position for making the adjustment is that there was no economic substance to the transaction. However, after discussing the issue with the Corporate Division of Chief Counsel, we determined that our case was covered by the recently issued Field Service Advice 199905008, which advised against applying the lack of economic substance argument. Accordingly, the National Office will not support our proposed primary position. We also discussed our alternative position, lack of business purpose, with the Corporate Division. The Division reviewed our alternative position, which we prepared after we were informed that the primary position was not approved. They will not support our alternative position either. They determined we do not have sufficient facts to support a disallowance of the deduction based on the the economic substance argument. Therefore, we approve the issuance of the notice only if the Enron Management, Inc. adjustment in the amount of

\$188,515,109, is not included.

If you have any questions, please contact Janet R. Balboni
at 281-721-7307.

BERNARD B. NELSON
District Counsel

By:


JANET R. BALBONI
Attorney